

STATE OF MICHIGAN
SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Supreme Court
No.

-vs-

Court of Appeals
No. 274776

BRIAN LAMORAND,
Defendant-Appellant,
_____ /

Macomb Circuit
No. 06-2343-FH

**PLAINTIFF-APPELLEE'S ANSWER TO APPLICATION FOR LEAVE TO
APPEAL**

135247

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BRIAN LAMORAND

FILED

DEC 28 2007

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

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ISSUE PRESENTED

ISSUE

DID THE TRIAL COURT'S DENIAL OF THE DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA RESULT IN A MISCARRIAGE OF JUSTICE, WHEN THE DEFENDANT WAS ALLOWED TO PLEAD GUILTY TO THE LESSER CHARGE OF MAINTAINING A DRUG HOUSE AND THE HIGHER CHARGE OF MANUFACTURING MARIJUANA WAS DISMISSED?

Plaintiff-Appellee's Answer: "No".

Defendant-Appellant's Answer: "Yes".

COUNTERSTATEMENT OF FACTS

The Plaintiff-Appellee accepts all nonargumentative portions of the Defendant-Appellant's Statement of Facts.

ISSUE

THE TRIAL COURT'S DENIAL OF THE DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA DID NOT RESULT IN A MISCARRIAGE OF JUSTICE, WHEN THE DEFENDANT WAS ALLOWED TO PLEAD GUILTY TO THE LESSER CHARGE OF MAINTAINING A DRUG HOUSE AND THE HIGHER CHARGE OF MANUFACTURING MARIJUANA WAS DISMISSED.

STANDARD OF REVIEW

A trial court's denial of a motion to withdraw a guilty plea is reviewed for abuse of discretion. *People v Osaghae*, 460 Mich 529; 596 NW2d 911 (1999).

ARGUMENT

Prior to sentencing the Defendant sought to withdraw his guilty plea. At sentencing the trial court denied the Defendant's motion to withdraw his guilty plea because the plea had already been accepted. T, 8-2-06, pp. 5-6. The Defendant now claims that the trial court abused its discretion in denying his motion to withdraw his guilty plea. He argues that he was innocent of the charge of Maintaining a Drug House and pled guilty only because he was pressured to accept the plea agreement so that his codefendants would receive the same plea. A defendant does not have an absolute right to withdraw a guilty plea. *People v Eloby*, 215 Mich App 472; 547 NW2d 48 (1996). Generally, the lower court's denial of a motion to withdraw a guilty plea will not be disturbed absent a miscarriage of justice. *People v Haynes*, 221 Mich App 551; 562 NW2d

241 (1997). The trial court's denial of the Defendant's motion to withdraw his guilty plea did not result in a miscarriage of justice in this case. The Defendant could have been convicted of the charge of Manufacturing Marijuana but was allowed to plead to a misdemeanor. Thus, the Defendant reduced his possible incarceration from four years to ninety days. Thus, the trial court did not abuse its discretion in denying the Defendant's motion to withdraw his guilty plea.

RELIEF REQUESTED

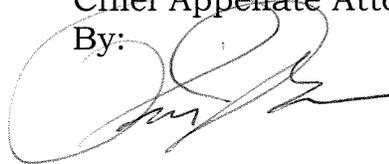
The Plaintiff-Appellee requests that this Honorable Court **DENY** the Defendant-Appellant's Application For Leave To Appeal because of the lack of merit in the issue presented and further the People respectfully pray that this Honorable Court will **AFFIRM** the judgment of conviction.

Respectfully submitted,

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DATED: December 14, 2007.